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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 78

SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA,
Petitioner,

vs.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Claims.

PETITIONER'S REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION.

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TOPICAL INDEX

Statement .....

Question presented .....

Argument .....

Conclusion .....

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PETITIONER'S REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION.

Statement.

The court below stated:

> "In so holding as to the easements and rights of way, we read the agreed Statement of Facts as not presenting the case of destruction of the availability of easements and rights of way for servicing of premises which remain in the area. If there were land and improvements not taken which could be served by the aid of these easements and rights of way, except for the project, we would have a different question." (Petition, Appendix B, p. 7.)

In spite of this statement, the Government's brief in opposition contends that the court below took cognizance of the fact that a large segment of the pipes and easements destroyed by the Government's taking did in fact

service areas outside of the taking area, and also recognized that part of the claim was for the cost of building new facilities to service these areas outside the taking area. (Govt. Br. pp. 4, 5.)

The Government's brief further states, at page 5:

> "Moreover, it was urged by Government counsel in the court below that there were no persons outside the area served by these facilities but, that even if there were, petitioner could continue to serve them. Thus this fact was not 'overlooked' but presented for determination."

Government's counsel at the hearing below is not a party to its brief in this Court, and those signing are mistaken. Nothing in the Statement of Facts suggests that all of Petitioner's pipes (some as large as 10 inches in diameter) terminated in the taking area and serviced nothing but premises now removed for the reservoir. This Reply will point out that facilities subjected to submersion in the Government's taking area did service outside the area, and as pointed out in the Petition (p. 10), Petitioner cannot use a pipeline for transmission of such an explosive product as natural gas after the Government has taken away its right of immediate access. [R. 30, par. 18; R. 44, par. 17.] The Court below obviously did not have such facts in mind, or it could not have made the statement quoted.

Question Presented.

DID THE COURT BELOW COMMIT FACTUAL ERROR IN BASING ITS DECISION ON THE MISTAKEN PREMISE THAT PETITIONER'S PIPES AND EASEMENTS DID NOT SERVICE BEYOND THE TAKING AREA, AND THAT THESE AND OTHER PIPES WERE NOT EFFECTIVELY DESTROYED BY THE GOVERNMENT?

Argument.

I.

Schedule III, attached to and incorporated in the petition in the Court of Claims and in the record here, is for the following loss inflicted by the Government:

> "FACILITIES TO BE RETIRED. FUNCTION OF THESE FACILTIES TO BE RELOCATED TO PROVIDE GAS SUPPLY TO TRACT NO. 15601, EAST OF DURFEE RD. AT MAPLE AND CENTRAL AVES., OUTSIDE OF THE TAKING AREA."

Exhibit F, the original of which is before this Court, shows in purple all of the pipelines contained in Schedule III for which substitutes had to be built by Petitioner outside the taking area in order to continue its service outside the taking area. In addition, Schedules I and II of the Petition, as delineated on Exhibit F, show the destroyed portions of Petitioner's pipelines reaching to the perimeter of the taking area, the projection of which clearly extends into areas not taken. The schedules of Petitioner's claim itemize thousands of feet of 10" pipeline, obviously a transmission line as distinguished from a distribution line (the former for the transmission of gas to large areas of consumption, the latter being 1¼" and 2" lines for the servicing of households). These lines are all marked and their routes plainly coursed in Exhibit F. Particular attention is called to Item 27-R where the transmission line extends to the perimeter of the taking area and obviously projects beyond. Item 28-R is another case in point. Attention is also called to Items 22-R and 23-R in San Gabriel and Lincoln Avenues where a segment of 10" transmission line in the taking area obviously projected outside the taking area in both directions.

II.

The Government further contends that it is simply in the position of other customers who choose to discontinue Petitioner's service. (Govt. Br. pp. 5, 6.) The Government was not a customer, nor similar to a customer. It was a condemnor, who took the customers out of the taking area and blocked it off. By asserting an exception in its complaint, the Government tried to avoid liability for Petitioner's property while paying for all other interests. [R. 27-28, 42.] No customer or group of customers could destroy the value of Petitioner's pipes in the streets and on owned rights of way, but the Government could and did so, by the exercise of its sovereign right of eminent domain. A customer who simply sought to discontinue Petitioner's service would not and could not affect Petitioner's transmission lines. Here the Government has destroyed them all, not just the service pipes on customer's premises. [Findings, par. 18.]

Conclusion.

Petitioner seeks to have this Court correct an obvious error. Petitioner seeks nothing for loss of customers, so the opinion of the court below is inapropos. The analogy to the "milkman customers" is far wide of the mark. It is the "milkman's truck" itself, or in the Petitioner's case, the pipelines which have been taken.

Petitioner seeks nothing for its franchise. Indeed, it seeks nothing for its easements. It seeks only the value of its pipe, which is now buried under the Government's reservoir area. This pipe is part of the Petitioner's capital structure. It is physical, tangible property, and its loss from Petitioner's capital structure is

the direct result of the Government's construction of a dam and taking of a reservoir.

What possible distinction is there between pipe buried under the dam, for which the Government paid Petitioner [Findings, pars. 13-14], and pipe buried under a reservoir formed by the dam? Why in law or reason should compensation be paid for one, denied for the other?

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